

EXHIBIT 13
UNREDACTED VERSION OF
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

--oOo--

WAYMO LLC,

Plaintiff,

Case

vs.

No. 3:17-cv-00939-WHA

UBER TECHNOLOGIES, INC.;

OTTOMOTTO LLC; OTTO TRUCKING LLC,

Defendants.

_____/

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VIDEOTAPED DEPOSITION OF JOHN WILLIAM GURLEY
THURSDAY, AUGUST 24, 2017

Reported by:

Anrae Wimberley

CSR No. 7778

Job No. 2687934

PAGES 1 - 182

Page 1

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Transcript of video-recorded deposition of
JOHN WILLIAM GURLEY taken at Morrison & Foerster LLP,
425 Market Street, 33rd Floor, San Francisco,
California, beginning at 8:37 a.m. and ending at 1:09
p.m. on Thursday, August 24, 2017, before Anrae
Wimberley, Certified Shorthand Reporter No. 7778.

1 know where that technology was evolving relative to 08:58:16
2 our service. 08:58:17
3 Q. And how often did this come up with the 08:58:21
4 board? 08:58:22
5 A. I would say only -- around Carnegie Mellon 08:58:39
6 and Otto were the only two times where it was 08:58:43
7 discussed in depth. I don't think it was a frequent 08:58:50
8 topic of every board meeting. 08:58:52
9 Q. Are you still with -- on the board at Uber? 08:59:05
10 A. I am not. 08:59:06
11 Q. When did you cease being on the board? 08:59:08
12 A. I believe it was mid to late June of this 08:59:17
13 year. 08:59:17
14 Q. And I may have asked this and, if I did, I 08:59:22
15 apologize. 08:59:22
16 But when did you first become a board member? 08:59:25
17 A. In January of 2011. 08:59:27
18 Q. When you were a member of the board, is it a 08:59:33
19 fair statement to say that you were very engaged with 08:59:37
20 the company? 08:59:41
21 MR. FLUMENBAUM: Objection as to form. 08:59:51
22 THE WITNESS: I'll answer yes. There's a question 08:59:54
23 as to whether -- like relative to what, you know. 08:59:58
24 BY MR. VERHOEVEN: 08:59:58
25 Q. Is it fair to say that you were the most 09:00:00

1 A. I did not. 09:12:20

2 Q. Then it continues on that sentence, 09:12:22

3 "Ottomotto is expected to de-risk our current laser 09:12:26

4 approach." 09:12:26

5 You understand that meant that purchasing 09:12:31

6 Ottomotto would give you laser technology and, 09:12:36

7 therefore, de-risk what you're currently doing? 09:12:39

8 MR. FLUMENBAUM: Objection as to form. 09:12:43

9 THE WITNESS: Like I said, there wasn't much 09:12:48

10 discussion on that particular topic, nor would I 09:12:51

11 suggest that the board as a whole has much deep 09:12:55

12 knowledge on laser technology, so I think it would be 09:12:57

13 taken as it's given. 09:13:00

14 BY MR. VERHOEVEN: 09:13:00

15 Q. Did you understand that the rationale for the 09:13:06

16 deal was to de-risk Uber's current laser approach? 09:13:12

17 A. That's written here, so I wouldn't object to 09:13:22

18 that notion. 09:13:23

19 Q. You don't disagree with that. 09:13:25

20 A. No, I do not. 09:13:26

21 Q. The second bullet in that cell says, 09:13:34

22 "Ottomotto could significantly enhance our overall AV 09:13:38

23 efforts and potentially accelerate current time 09:13:42

24 frames." 09:13:42

25 Do you see that? 09:13:43

Page 83

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1 if you can recall, who said it? For example, did 10:34:42
2 someone say, then why is he taking the Fifth? 10:34:45
3 MR. BRILLE: Object to form. 10:34:47
4 THE WITNESS: I can certainly say that my opinion 10:34:53
5 at that moment in time was that his taking the Fifth 10:34:56
6 should result in his termination, based on my best 10:35:02
7 knowledge of how that situation should be dealt with. 10:35:06
8 BY MR. VERHOEVEN: 10:35:06
9 Q. And did -- you referenced conversations with 10:35:10
10 the board on this subject? 10:35:12
11 A. Yes. 10:35:12
12 Q. How many such conversations were there? 10:35:16
13 A. I can't remember specifically, but my general 10:35:21
14 recollection is that it spanned multiple board 10:35:24
15 meetings. 10:35:31
16 Q. And your position to the board was that he 10:35:34
17 should be terminated? 10:35:35
18 A. Yes. 10:35:35
19 Q. And you made that clear on the first of these 10:35:41
20 multiple board meetings? 10:35:43
21 A. Once I'd gotten up to speed and had proper 10:35:48
22 knowledge of what I thought was the best to do, 10:35:55
23 which -- as I said earlier, there was a time window 10:35:58
24 where that happened. So it wasn't -- my voicing of 10:36:06
25 this opinion wasn't immediate, like right after he 10:36:09

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1 him and terminate, for the reasons that I've 10:46:50
2 discussed. 10:46:51
3 Q. Right. 10:46:51
4 So -- but I'm asking you specifically, at the 10:46:54
5 board meeting, Kalanick repeated his view -- 10:46:59
6 A. Right.
7 Q. -- that Levandowski didn't do anything 10:47:02
8 wrong -- 10:47:03
9 A. I think I understand your question?
10 I don't remember if there were specific 10:47:06
11 conversations that said, well, if he didn't do 10:47:08
12 anything wrong, why would he plead the Fifth? I don't 10:47:10
13 remember if that happened. It might have. 10:47:13
14 Q. Well, do you remember -- was there response 10:47:15
15 to Mr. Kalanick at the meeting, after he made that 10:47:19
16 statement, just generally? There was a discussion; 10:47:25
17 right? 10:47:26
18 A. Yeah, I think there was a discussion and I 10:47:28
19 think -- and I don't recall exactly who chimed in, but 10:47:32
20 there was others, like me, that felt that taking the 10:47:38
21 Fifth should be dealt with. 10:47:40
22 Q. And who were those people? 10:47:42
23 A. I just said I don't recall exactly who was on 10:47:45
24 that point of view. 10:47:46
25 Q. Do you remember anyone on the board that you 10:47:49

1 order that was public? 10:59:58

2 A. I didn't have any perspectives that were 11:00:08

3 outside of a discussion from counsel on that topic. 11:00:13

4 Q. Why didn't Uber fire Mr. Levandowski upon the 11:00:20

5 issuance of the preliminary injunction? 11:00:23

6 A. I can't speak to that because I wasn't in a 11:00:32

7 position to have authority to make that decision. 11:00:35

8 Q. Who was? 11:00:36

9 A. Presumably Travis, the CEO. 11:00:39

10 Q. So the board didn't have authority to direct 11:00:42

11 that -- I thought you -- withdrawn. 11:00:46

12 I thought you previously mentioned that you 11:00:48

13 had recommended that he be terminated -- 11:00:50

14 A. I had. I had. 11:00:52

15 Q. -- at a board meeting. 11:00:53

16 A. Yeah. 11:00:54

17 Q. But the board didn't have authority to order 11:00:56

18 that? 11:00:57

19 A. The board did not order that, if that's your 11:01:00

20 question. 11:01:00

21 Q. But they had the authority to? 11:01:03

22 A. I suppose they could have made a motion and 11:01:06

23 voted to do that. 11:01:08

24 Q. And you encouraged the board to do that? 11:01:11

25 A. I encouraged the board to terminate once I 11:01:13

1 had an understanding of what my interpretation was of 11:01:18
2 him pleading the Fifth. And my efforts around 11:01:22
3 creating the committee were my avenue to try and see 11:01:27
4 that through. 11:01:27

5 Q. After the issuance of the preliminary 11:01:36
6 injunction order, did you have any discussions with 11:01:39
7 Mr. Kalanick about terminating Mr. Levandowski? 11:01:42

8 A. Not specifically related to that event. 11:01:47

9 Q. Okay. So it didn't cause you to have any 11:01:50
10 more conversations with Mr. Kalanick? 11:01:54

11 A. No. But I had already determined that I 11:01:56
12 thought the best course of action was termination. So 11:01:58
13 like I was not more compelled; I was already 11:02:02
14 compelled. 11:02:04

15 Q. Did you discuss the preliminary injunction 11:02:05
16 order with Mr. Kalanick and repeat your 11:02:09
17 recommendation? 11:02:10

18 A. Not outside of a privileged conversation, no. 11:02:14

19 Q. Was there a board meeting about the 11:02:19
20 preliminary injunction? 11:02:20

21 A. I don't remember if there was one called. I 11:02:23
22 don't think so. There were lots of board meetings at 11:02:27
23 this moment in time. 11:02:29

24 Q. Do you recall receiving -- withdrawn. 11:02:34

25 Did you ask to see the due diligence report 11:02:39

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1 Q. And it's possible you communicated that to 11:41:22
2 Mr. Levandowski -- or to Mr. Kalanick? 11:41:25

3 A. It's possible, but I don't have -- 11:41:26

4 MR. FLUMENBAUM: Not Levandowski. 11:41:27

5 THE WITNESS: Right. 11:41:28

6 I don't have specific recollection of having 11:41:31
7 done that, but it's possible. 11:41:33

8 BY MR. VERHOEVEN: 11:41:33

9 Q. It's more than likely; right? 11:41:35

10 A. I don't know. 11:41:37

11 MR. FLUMENBAUM: Objection. Objection. 11:41:38

12 MR. VERHOEVEN: Do you want to take a break? 11:41:42

13 MR. FLUMENBAUM: Sure. Let's take a short break. 11:41:44

14 THE VIDEOGRAPHER: This marks the end of DVD No. 2 11:41:47
15 in the deposition of William Gurley. We're off the 11:41:49
16 record at 11:41 a.m. 11:41:51

17 (Recess taken.) 11:41:51

18 (Plaintiff's Exhibit 915 was marked.) 11:52:45

19 THE VIDEOGRAPHER: Back on the record. 11:52:53

20 This the beginning of DVD No. 3, and the time 11:52:56
21 is 11:52 a.m. 11:52:58

22 BY MR. VERHOEVEN: 11:52:58

23 Q. By May of 2017, were you aware that some 11:53:07
24 investors of Uber wanted Mr. Kalanick to resign as 11:53:13
25 CEO? 11:53:14

1 view to Travis about a number of issues that had been 12:07:55
2 developing over the course of 2017. 12:07:58
3 MR. BRILLE: I'm going to note my objection to 12:07:59
4 this exhibit, to the extent it is unsigned. And it is 12:08:03
5 unclear to me, at least, what this document is. 12:08:06
6 THE WITNESS: Okay. 12:08:09
7 BY MR. VERHOEVEN: 12:08:09
8 Q. Did someone in this group send this exhibit 12:08:19
9 to Mr. Kalanick? 12:08:21
10 A. It was presented to him by two of the -- two 12:08:25
11 of my partners at Benchmark. 12:08:28
12 Q. Which partners? 12:08:29
13 A. Matt Cohler and Peter Fenton. 12:08:32
14 Q. Was it presented in person? 12:08:38
15 A. Yes. 12:08:38
16 Q. Where? 12:08:40
17 A. In a hotel in Chicago. 12:08:42
18 Q. Did Mr. Kalanick have any advance indication 12:08:51
19 that this was going to be presented to him? 12:08:57
20 A. There had been a number of one-on-one 12:09:06
21 conversations that related to trying to find solutions 12:09:13
22 to move past some of the many issues outlined here. 12:09:17
23 Some of that related to a COO search. 12:09:20
24 Some of those related to various other 12:09:24
25 alternatives, like coaching and that kind of thing. 12:09:28

1 Some of those had been had, not just with me, 12:09:32
2 but with Matt and Trav- -- and Travis. 12:09:35
3 But there was not a -- there was nothing that 12:09:42
4 said, "Hey, we're bringing" -- there was not a 12:09:45
5 communication that said, "Hey, we're about to bring 12:09:49
6 you this letter." 12:09:50
7 It was, like, "We need to desperately sit 12:09:53
8 down and talk," and then the letter was presented. 12:09:56
9 Q. Were you aware of the contents of this letter 12:09:58
10 before it was presented? 12:10:00
11 A. Yes. 12:10:00
12 Q. Did you review it? 12:10:01
13 A. Yes. 12:10:01
14 Q. In the third paragraph of Exhibit 916 it 12:10:06
15 starts with: 12:10:06
16 "A series of recent revelations, however, 12:10:10
17 continues to affect Uber's business and put the 12:10:13
18 mission at risk." 12:10:15
19 Do you see that? 12:10:16
20 A. Um-hum. 12:10:17
21 Q. And later in the paragraph there's a 12:10:18
22 reference to the "ongoing Waymo trade secret 12:10:20
23 litigation." 12:10:23
24 Do you see that? 12:10:24
25 A. Correct. Yes. 12:10:24

1 happened at the meeting? 12:18:01

2 A. Yes.

3 Q. What did they say? 12:18:03

4 A. I'll start at a high level. Like there was a 12:18:10

5 lot of conversations back and forth. 12:18:12

6 There were discussions of -- you know, there 12:18:24

7 was a lot of discussion about the details of these 12:18:27

8 recommendations and how they would manifest themselves 12:18:30

9 in an agreement. 12:18:31

10 There were edits of that back and forth in a 12:18:36

11 separate document that he eventually signed. 12:18:41

12 And there are questions about disclosures, 12:18:47

13 what we would do or not do if he agreed to these 12:18:52

14 things, or refrain from doing. 12:19:00

15 That's the general recollection. 12:19:06

16 Q. And that all happened at the one meeting? 12:19:09

17 A. I think there were a series of meetings over 12:19:11

18 an extended period of time. 12:19:13

19 Q. Did -- did Mr. Kalanick agree to resign as 12:19:18

20 CEO as part of that first meeting? 12:19:22

21 A. I don't -- when you say "first meeting," I 12:19:29

22 think they met and -- and broke up and met and broke 12:19:35

23 up and met and broke up several times. 12:19:36

24 So I don't have enough information to know 12:19:40

25 whether he had agreed on that one point in the very 12:19:43

1 Do you see that? 12:30:24

2 A. Yes. 12:30:25

3 Q. And this refers, in part, to your prior 12:30:30

4 testimony that if Benchmark had known about the 12:30:35

5 information contained in the Stroz report, it would 12:30:37

6 never have agreed to this amendment, right? 12:30:45

7 MR. BRILLE: Object to the form. 12:30:46

8 MR. FLUMENBAUM: Object to the form. 12:30:47

9 You can answer.

10 BY MR. VERHOEVEN:

11 Q. Well, you're correct. Let me rephrase. 12:30:51

12 This refers to your prior testimony that 12:30:54

13 Benchmark never would have approved the transaction 12:30:56

14 had it been aware of the Stroz report, correct? 12:31:02

15 MR. BRILLE: Same objection. 12:31:03

16 MR. FLUMENBAUM: Objection as to form, but you 12:31:05

17 may -- 12:31:06

18 THE WITNESS: The only clarification I would make 12:31:08

19 is that there are many other matters, also. 12:31:10

20 BY MR. VERHOEVEN:

21 Q. Yeah.

22 A. But this is one of those. Yes, correct. 12:31:14

23 Q. But it's your contention that Benchmark would 12:31:18

24 not have approved the amended certificate of 12:31:18

25 incorporation referenced here, or the voting 12:31:22

1 With respect to the Otto acquisition, there's 12:33:57
2 actually more detail later in the complaint. But it's 12:34:00
3 become public knowledge, not involving the Stroz 12:34:05
4 report, that at the time the board was asked to 12:34:09
5 approve this, that -- that Travis and other members of 12:34:13
6 the management team had knowledge that there were five 12:34:16
7 disks that were in Anthony's possession, and that he 12:34:23
8 said there was Google information on those disks. So 12:34:25
9 that's now in the public record. 12:34:29

10 When you look at the -- we've already been 12:34:32
11 through it. But you look at the deal, and the fact 12:34:35
12 that so much of it weighed on him and the fact that 12:34:39
13 there were large indemnity provisions put aside 12:34:45
14 specifically for him, I don't know of a way you could 12:34:50
15 possibly present that to a board and say that this was 12:34:53
16 clean diligence and -- and that be okay. Like, I -- I 12:35:02
17 can't fathom that. 12:35:05

18 BY MR. VERHOEVEN:

19 Q. When you referred to "him," you're referring 12:35:08
20 to Mr. Levandowski, right, in that answer? 12:35:10

21 MR. BRILLE: Object to form. 12:35:13

22 THE WITNESS: It's in the public record that -- 12:35:15
23 that the Uber executives were aware -- I'll -- I'll 12:35:17
24 try not to use pronouns -- were aware that Anthony 12:35:21
25 Levandowski had the five disks. 12:35:24

1 A. Yes, this section. That's fair. Correct. 12:38:46

2 Q. You've referenced there's a -- I'm sorry. 12:39:07

3 The complaint references: 12:39:12

4 "Kalanick praised Levandowski as one of the 12:39:15

5 world's leading autonomous engineers and an 12:39:20

6 entrepreneur with a real sense of urgency. 12:39:24

7 "Kalanick further described Levandowski as 12:39:26

8 his brother from another mother." 12:39:30

9 The allegation is -- and your belief is -- 12:39:34

10 that he was saying all that, but withholding the 12:39:37

11 information he had from the Stroz investigation; 12:39:41

12 right? 12:39:41

13 MR. BRILLE: Object to form. 12:39:44

14 MR. FLUMENBAUM: Object to form. You can try to 12:39:46

15 answer that. 12:39:49

16 THE WITNESS: These are -- these are taken from -- 12:39:50

17 from -- as you can see, from public statements that he 12:39:53

18 made. 12:39:54

19 His praise for Anthony in these public venues 12:39:59

20 is consistent with what he presented at the board 12:40:03

21 level, and so there's no inconsistency here. 12:40:06

22 I -- and as you -- as you assert, he did not 12:40:12

23 disclose these other details, you know. And I -- and 12:40:17

24 I had mentioned, and they're later in here in the 12:40:20

25 complaint, that some of that is now public with regard 12:40:23

1 to the five-disk matter. 12:40:26

2 BY MR. VERHOEVEN: 12:40:26

3 Q. The last sentence of this paragraph says: 12:40:29

4 "In discussing the Otto transaction in 2016, 12:40:32

5 Kalanick repeatedly emphasized to Gurley and other 12:40:36

6 board members that Uber's acquisition of Otto, 12:40:39

7 employment of Anthony Levandowski, would be 12:40:41

8 transformative for Uber's business." 12:40:44

9 Do you see that? 12:40:45

10 A. I do. 12:40:46

11 Q. What is that referring to? 12:40:48

12 A. Once again, consistent with what we discussed 12:40:53

13 earlier, there was a -- a big part of the argument for 12:40:57

14 why we needed to do this transaction was to employ 12:41:01

15 Anthony Levandowski, who -- who Mr. Kalanick believed 12:41:04

16 was one of the leading experts on autonomous vehicles 12:41:07

17 in -- in the -- in the world. 12:41:10

18 Q. Was employing Anthony Levandowski worth 12:41:14

19 \$680 million? 12:41:17

20 MR. BRILLE: Object to form. 12:41:17

21 MR. FLUMENBAUM: Object to form. We've sort of 12:41:19

22 been over this. 12:41:20

23 You can answer it again. 12:41:22

24 THE WITNESS: Yeah, I don't -- I don't mind going 12:41:24

25 over it again. 12:41:25

1 Do you see it's sprinkled through the 12:54:57
2 paragraph there? 12:54:58
3 A. Yes. 12:54:58
4 Q. When we testified earlier about this -- I 12:55:02
5 don't want to go over it again -- I think you just 12:55:05
6 said -- you and I just said "the Stroz report." 12:55:09
7 But were you referencing, specifically in 12:55:11
8 this time period, the interim findings of the Stroz 12:55:14
9 investigation? 12:55:16
10 MR. FLUMENBAUM: Objection as to form. 12:55:19
11 BY MR. VERHOEVEN: 12:55:19
12 Q. When you testified about if something had 12:55:22
13 been disclosed, if the Stroz report had been 12:55:25
14 disclosed, more accurately what you meant is if the 12:55:28
15 interim findings of the Stroz report -- of the Stroz 12:55:30
16 investigation had been disclosed; is that right? 12:55:33
17 A. This particular complaint was based on all 12:55:44
18 that information that was in the public record. 12:55:46
19 There are documents related to this lawsuit 12:55:50
20 that highlight that, as of this date, there were these 12:55:54
21 interim findings available. 12:55:55
22 Q. Right.
23 A. And we're merely highlighting that those were 12:55:59
24 never disclosed to the board. 12:56:01
25 Q. Okay. I direct your attention to paragraph 12:56:12

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1 A. Nina Qi and Cameron. 12:59:24

2 Q. So with respect to the Waymo dispute or 12:59:29

3 the -- withdrawn. 12:59:30

4 With respect to the Otto acquisition, this 12:59:35

5 phrase you interpret to reference those two 12:59:37

6 individuals? 12:59:38

7 A. Yes. 12:59:38

8 Q. Has either of those two individuals been 12:59:47

9 terminated, to your knowledge? 12:59:49

10 A. No. 12:59:49

11 Q. All right.

12 MR. FLUMENBAUM: Can I have a -- all right. 13:00:05

13 Forget it. Go ahead. 13:00:07

14 MR. VERHOEVEN: So what did you want to talk to 13:00:10

15 him about? 13:00:10

16 MR. FLUMENBAUM: No, just go ahead. 13:00:13

17 MR. VERHOEVEN: Okay. 13:00:13

18 BY MR. VERHOEVEN:

19 Q. There came a time in which you resigned from 13:00:16

20 the board of Uber? 13:00:17

21 A. Correct. 13:00:17

22 Q. When was that, roughly? 13:00:19

23 A. I think it was a couple of days after Travis 13:00:27

24 signed the resignation letter we've already looked at. 13:00:32

25 Q. Why did you resign? 13:00:45

1 A. The members of -- of our partnership and I 13:00:49
2 had a lengthy discussion about trying to -- whether or 13:00:56
3 not it made sense to swap out the board member that 13:01:00
4 represented Benchmark with Uber, in an effort to try 13:01:04
5 and move things forward in a positive direction. 13:01:08
6 The -- the conversations and back and forth 13:01:13
7 and events that led to the meeting in Chicago, I think 13:01:16
8 it's safe to say, had a strain on the relationship 13:01:21
9 between myself and -- and Mr. Kalanick. And it was 13:01:29
10 merely a decision from our firm to try and put a new 13:01:35
11 foot forward to try and create kind of a new day and 13:01:39
12 new relationship with the board. 13:01:41
13 Q. Did you have any discussions with anyone at 13:01:45
14 Uber about your resignation before you resigned? 13:01:48
15 A. I did not. 13:01:49
16 Q. What about with other board members? 13:01:51
17 A. I did not. 13:01:53
18 Q. Have you had any conversations with anybody 13:02:01
19 at Uber since you've resigned from the board? 13:02:04
20 A. Yeah. There were -- there were numerous 13:02:04
21 conversations, as part of the handoff process I was 13:02:13
22 involved in, all of those committees. I wanted to 13:02:16
23 make sure that -- that my partner got the benefit of 13:02:19
24 the -- you know, the transfer of information, that 13:02:23
25 kind of thing. We had a lot of meetings to make sure 13:02:26

1 FEDERAL CERTIFICATE OF DEPOSITION OFFICER
2 I, ANRAE WIMBERLEY, CSR NO. 7778, do hereby
declare:

3 That, prior to being examined, the witness named
4 in the foregoing deposition was by me duly sworn
pursuant to Section 30(f)(1) of the Federal Rules of
Civil Procedure and the deposition is a true record of
5 the testimony given by the witness;

6 That said deposition was taken down by me in
shorthand at the time and place therein named and
7 thereafter reduced to text under my direction;

8 --X-- That the witness was requested to
review the transcript and make any changes to the
9 transcript as a result of that review pursuant to
Section 30(e) of the Federal Rules of Civil Procedure;

10 ----- No changes have been provided by the
witness during the period allowed;

11 ----- The changes made by the witness are
12 appended to the transcript;

13 ----- No request was made that the transcript
be reviewed pursuant to Section 30(e) of the Federal
14 Rules of Civil Procedure.

15 I further declare that I have no interest in the
event of the action.

16 I declare under penalty of perjury under the laws
17 of the United States of America that the foregoing is
true and correct.

18 WITNESS my hand this 25th day of August, 2017.
19
20
21

22 
23
24

25 ANRAE WIMBERLEY, CSR NO. 7778